

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-10241
Non-Argument Calendar

<p>FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT November 2, 2005 THOMAS K. KAHN CLERK</p>
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D. C. Docket No. 04-80042-CR-DTKH

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSEPH CASEY,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(November 2, 2005)

Before TJOFLAT, CARNES and PRYOR, Circuit Judges.

PER CURIAM:

Joseph Casey appeals his 120-month sentence imposed after he was

convicted following his plea of guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). The only issue he raises concerns the effect of United States v. Booker, 543 U.S. ___, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), on his sentence. As the government correctly concedes, there was non-constitutional Booker error in this case, it was preserved, and the government cannot show it was harmless. Accordingly, Casey is entitled to be resentenced.

The sentence is **VACATED**, and the case is **REMANDED** with instructions that Casey is to be resentenced in accord with the Booker decision.